REMARKS/ARGUMENTS

Reconsideration of the present application, as amended, is respectfully requested.

Claims 1, 3-21, 23-30 and 38-39 are pending in this application. All were rejected. Specifically, claims 1, 2-7, 10, 12-21, 23-26, 29-30 and 38-39 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,178,449, which issued January 23, 2001 to R.F. Forman *et al.* Claims 8-9, 11 and 27-28 were rejected under 35 U.S.C. §103(a) as being obvious by the Forman patent in view of U.S. Patent No. 6,438,592, which issued August 20, 2002 to M.G. Killian.

The rejection of the applicants' claims is misplaced. Independent claims 1 and 20 call for the use of a previously recorded transaction between a user machine and an information source. That is, claim 1 recites, "...continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded between a user machine, the user machine not the data acquisition agent, and the information source...," and claim 20 recites, "...wherein the data acquisition agent is configured to receive a previously recorded transaction between a user machine, the user machine not the data acquisition agent, and the web server and utilize the recorded transaction to execute the same transaction with the web server."

In rejecting claims 1 and 20, the Examiner cited the Forman patent, specifically, col. 10, lines 16-35. With due respect to the Examiner, the applicants do not find any teaching relevant to the cited claim language. There is no description of a previous transaction, the recording of that transaction, and the transaction is between a user machine, not the data acquisition agent, and the information source, as stated in the language of claim 1. Rather, the cited portion of the Forman patent describe how times of straightforward application transactions between a client and server are measured and recorded. "The actual measurement and recording of transaction times occurs in steps 726-734...." Col. 10, lines 16-17. "The method of monitoring transaction times using the computer system of Figs. 4-6 is represented in a flow diagram of FIG. 7....The client application instance 710 corresponds to one of the client applications, such as client application 1 (414) or 3 (434) of FIG. 4." Col. 9, lines 44-51.

The cited Killian patent provides no help in rejecting these claims either. As the Examiner has previously noted, "Referring to claims 1, and 20, Killian reference discloses connecting a data acquisition agent to the network...; however, Killian fail to disclose simulating a transaction previously recorded between a user machine and the information source." Office Action of November 11, 2003, page 3.

Therefore, independent claims 1 and 20 are not anticipated by the Forman patent (nor the Killian patent) and should be allowed. Claims 3-19, 21, 23-30 and 38-39 should also be allowed at least for being dependent upon allowable base claims. Furthermore, it is evident that some, if not all, of these dependent claims are allowable in their own right and further illustrate the differences between the cited references and the applicants' invention.

For example, dependent claim 3 further characterizes the applicants' invention, "wherein collecting performance measurements comprises collecting download time of the data in response to the request for information." The Examiner's assertion that the "Forman reference discloses collecting performance measurements comprises collecting download time of the data in response to the request for information (Figure 5)," suggests that only a portion of the method recited in claims 1 and 3 is measured. That is, the performance of the first two steps of claim 1 and referred to in claim 3, "sending a request for information to the information source from a data acquisition agent connected to the network," and "loading data responsive to the request for information onto the data acquisition agent from the information source," is measured.
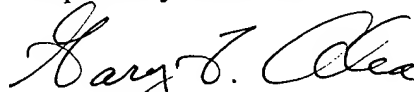
However, the performance of "continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded between a user machine, the user machine not the data acquisition agent, and the information source" is not measured since Forman et al. have no description of a return to the same application transaction so that times of portions of a transaction are measured. See the description of config table 482, i.e., col. 7, line 60 to col. 8, line 6, and stats table 484, i.e., col. 8, lines 49-62. It makes no sense that the times of partial transactions, but not the time of the entire transaction, are measured and collected. Rather, it would seem more logical to assume that Forman et al. measure and collect

the times of entire application transactions. "With the config table 482 of FIG. 5 properly configured, transaction time agent 460 is now ready to collect transaction times for the listed applications." Col. 8, lines 47-49. In such a case, claim 3 cannot be said to be anticipated by the Forman patent and hence should also be allowed.

Another example is dependent claim 4 which has the additional limitation, "wherein collecting performance measurements comprises collecting number of bytes downloaded for the transaction," no specific reasons for rejecting this claim are stated in the current Office Action. Indeed, the Forman patent does not describe the collection of the number of downloaded bytes in a transaction. See the description of the stats table 484 in Fig. 6 from col. 8, line 47 to col. 9, line 32.

Hence for the foregoing reasons, the applicants believe all the pending claims 1, 3-21, 23-30 and 38-39 are allowable and request that the rejections be withdrawn and the case be passed to issue. If a telephone conference would in any way expedite the prosecution of the application, the Examiner is requested to call the undersigned at (408) 446-7687.

Respectfully submitted,

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